

DOCKET NO. 93-44  
ORIGINAL

FCC MAIL SECTION

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
FCC 93M-191  
31361

APR 27 11 53 AM '93

In re Applications of ) MM DOCKET NO. 93-44 ✓  
)  
RURAL INITIATIVES FOR SHELTER AND ) File No. BPED-870817MC  
EDUCATION )  
)  
AMERICAN INDIAN BROADCAST GROUP, INC. ) File No. BPH-870820MB  
)  
)  
For Construction Permit for a )  
New FM Station on Channel 279A )  
in Hartford, Michigan )

MEMORANDUM OPINION AND ORDER

Issued: April 23, 1993 ; Released: April 27, 1993

1. Under consideration are: (a) a Petition for Leave to Amend, filed on March 24, 1993, by Rural Initiatives for Shelter and Education ("Rural"); (b) a supplement to (a), filed on April 14, 1993, by Rural;<sup>1</sup> (c) a Motion for Summary Decision, filed on March 24, 1993, by Rural;<sup>2</sup> (d) a Joint Request for Approval of Settlement Agreement, Dismissal of Application and Grant of Application, filed on March 24, 1993, by Rural and American Indian Broadcast Group, Inc. ("Group"); (e) a supplement to (d), filed on April 14, 1993, by Rural;<sup>3</sup> (f) consolidated comments on the above, filed on April 19, 1993, by the Mass Media Bureau ("Bureau"); and (g) a letter to the Presiding Judge, dated April 21, 1993, from W. Jan Gay, Assistant Chief of the Bureau's Audio Services Division.

Petition for Leave to Amend

2. Rural seeks leave to amend its application to explain why Section II, Item 7, of FCC Form 340 concerning pledges of stock was answered in the negative; to correct Section V-B, Item 9, to specify that the overall height above ground of its tower is 100 meters; and to supply a statement from its consulting engineer reflecting compliance with current regulations governing human exposure to radio frequency ("RF") radiation levels. Rural notes that the Hearing Designation Order in this proceeding, DA 93-322, released April 7, 1993

<sup>1</sup> The supplement transmits the original signature copy of the amendment. A facsimile copy of the signed amendment was filed with Rural's Petition.

<sup>2</sup> Rural's Motion for Summary Decision was incorrectly captioned "Petition for Leave to Amend." Rural corrected the caption and refiled its motion on April 14, 1993.

<sup>3</sup> The supplement transmits original signature copies of the Settlement Agreement and the Declaration of a Rural principal. Copies of these documents containing facsimile signatures were filed with the Joint Request.

("HDO"), required the filing of an amendment addressing these matters.<sup>4</sup> The Bureau has reviewed Rural's amendment and supports its acceptance.

3. The unopposed Petition for Leave to Amend will be granted and the amendment accepted. Suffice it to say, Rural has shown good cause for the acceptance of its amendment, which was filed in compliance with the directives of the HDO and addresses matters first raised therein.

#### Motion for Summary Decision

4. Rural seeks summary decision of the contingent environmental issue (Issue 1) and the air hazard issue (Issue 2) specified against it in the HDO. In support of its request for summary decision of the environmental issue, Rural relies on the certification of its consulting engineer that its proposal complies with the Commission's RF radiation guidelines. In support of its request for summary decision of the air hazard issue, Rural states that the specification of that issue was based on a minor error in the engineering portion of its application, and that the error was corrected in its amendment.

5. The Bureau supports the resolution of Issue 2 in Rural's favor, stating that the error which formed the basis for the specification of the issue has now been corrected. In addition, the Assistant Chief, Audio Services Division, requests the elimination of Issue 1, having concluded that the information supplied by Rural in its amendment satisfies the requirements of Section 1.1311 of the Commission's Rules.

6. The Motion for Summary Decision will be granted. Issue 2, the air hazard issue, will be resolved in Rural's favor. In light of Rural's amendment correcting the height of its tower above ground level, it is clear that no genuine issue as to any material fact remains for determination at the hearing, and that Rural's proposal would not constitute a hazard to air navigation. See Section 1.251(d) of the Commission's Rules; see also para. 7 of the HDO. Further, as requested by the Assistant Chief, Audio Services Division, Issue 1, the contingent environmental issue, will be deleted inasmuch as Rural has established that its proposal is in compliance with the Commission's environmental rules.

#### Joint Request for Approval of Settlement Agreement

7. Rural and Group have entered into a Settlement Agreement which has been submitted for approval. Pursuant to the agreement, Group will dismiss its application for monetary consideration from Rural not to exceed \$5,000. The Bureau supports approval of the agreement.

8. The Joint Request will be granted, the Settlement Agreement will be approved, and Group's application will be dismissed. Rural and Group have demonstrated compliance with Section 73.3525(a) of the Commission's Rules.

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<sup>4</sup> The original HDO in this proceeding, DA 93-222, released March 8, 1993, was "set aside" by DA 93-322. However, the obligations of the parties to file various amendments, and the issues specified for hearing, were unchanged.

Specifically, the applicants have shown that their respective applications were not filed for the purpose of reaching or carrying out a settlement agreement, that the amount promised is all that will be paid, that such amount is not in excess of the legitimate and prudent expenses of Group, and that approval of the agreement will serve the public interest. In addition, Group has provided an itemized accounting of its reimbursable expenses, and has established that such expenses exceed the amount of consideration to be paid by Rural.

9. Given the deletion of Issue 1, the resolution of Issue 2 in Rural's favor, and the approval of the Settlement Agreement, there exists no impediment to a grant of the Rural application, and it will be granted.

Ordering Clauses

Accordingly, IT IS ORDERED that the Petition for Leave to Amend filed by Rural on March 24, 1993, IS GRANTED and the accompanying amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the Motion for Summary Decision filed by Rural on March 24, 1993 (and refiled on April 14, 1993) IS GRANTED, that Issue 1, the contingent environmental issue, IS DELETED, and that Issue 2, the air hazard issue, IS RESOLVED in favor of Rural.

IT IS FURTHER ORDERED that the Joint Request for Approval of Settlement Agreement, Dismissal of Application and Grant of Application filed by Rural and Group on March 24, 1993, IS GRANTED; that the Settlement Agreement IS APPROVED; that reimbursement to Group in the amount of \$5,000 IS AUTHORIZED; and that the application of American Indian Broadcast Group, Inc., IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the above-captioned application of Rural Initiatives for Shelter and Education for a construction permit for a new FM station on Channel 279A in Hartford, Michigan, IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge